United Nations CCPR/C/110/D/1963/2010

International Covenant on Civil and Political Rights

Distr.: General
29 April 2014

Original: English

Human Rights Committee

Communication No. 1963/2010

Decision adopted by the Committee at its 110th session (10–28 March 2014)

Submitted by:	T.W. and G.M. (represented by counsel L'udovít Mráz)
Alleged victim:	The authors
State party:	Slovak Republic
Date of communication:	23 February 2009 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 6 August 2010 (not issued in document form)
Date of adoption of decision:	25 March 2014
Subject matter:	Restitution of property
Procedural issues:	Exhaustion of domestic remedies
Substantive issues:	Discrimination; right to an effective remedy
Articles of the Covenant:	Articles 2, para. 3; 26
Article of the Optional Protocol:	Article 3

[Annex]

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Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (110th session)

concerning

Communication No. 1963/2010*

Submitted by:	T.W. and G.M. (represented by counsel L'udovít Mráz)
Alleged victim:	The authors
State party:	Slovak Republic
Date of communication:	23 February 2009 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 March 2014,

Adopts the following:

Decision on admissibility

1.1 The authors of the complaint, dated 23 February 2009, are T.W. and G.M., Slovak nationals born in 1960 and 1953 respectively and residing in the Slovak Republic. They claim to be victims of a violation by the Slovak Republic of their rights under article 26 of the International Covenant on Civil and Political Rights, having been forced to cede their property to the Slovak Republic.[1] The authors are represented by counsel, L'udovít Mráz.

1.2 On 15 December 2010, the Committee, acting through its Special Rapporteur on new communications, denied a request from the State party to split consideration of the admissibility of the communication from its merits.

The facts as submitted by the authors

2.1 The authors' ancestors, the Hermmans family, were Slovak citizens of Jewish confession and owned a residential building located in Trenčianske Teplice (parcels no. 843 and 844). During the Second World War, the Hermmans' property was expropriated under racial legislation and the Hermmans were deported to concentration camps, where they

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Ms. Margo Waterval and Mr. Andrei Paul Zlătescu.

[1] The first Optional Protocol to the International Covenant on Civil and Political Rights entered into force for the Slovak Republic on 1 January 1993.

died. The authors assert that their property rights derive from the Hermmans' property rights.

2.2 In 1949, the Trenčín district court declared void the transfer of the Hermmans' property to S.Z. and his wife. The authors state that S.Z. had actively participated in the application of the aforementioned racial legislation.[2] In 1951, the Bratislava Court of Appeals confirmed the decision of the Trenčín district court.[3] Nevertheless, the same courts accepted the acquisition by S.Z. of the property because the law was applied in accordance with prevailing class ideology. The courts noted that S.Z., as a labourer, depended on having housing in the building in question, whereas the Hermman heiress was wealthy and had housing alternatives. The courts ordered S.Z. to pay half of the value of the building to the Hermman heiress. However, this order was never carried out.

2.3 The daughter of S.Z., M.S., applied for restitution of the building under Law No. 87/1991. The authors base their complaint on court proceedings involving M.S. On 14 September 1994, her application was rejected by the Bratislava Court of Appeals,[4] which based its decision on the fact that the Hermmans had been deported under racial legislation against the Jewish people and that S.Z. had actively participated in the deportation. However, thereafter, the Prosecutor General disputed the decision of the Court of Appeals by introducing an appeal on points of law.[5] This appeal was based on the claim that the law allowing M.S. to recover the property contained a provision stating that it was inapplicable if the property in question was acquired through the application of racial legislation.[6] On 17 December 1996, the Supreme Court rejected the Prosecutor General's appeal,[7] based on a decision of the Constitutional Court.[8]

2.4 M.S. advertised the property in question for sale, listing a price of 16 million Slovak crowns. In 2004, the Trenčín district court denied the claim of the authors, who are the successors in interest to the Hermmans, for half of the proceeds from the sale of the building.[9] In 2005, the authors' appeal was rejected by the Court of Appeals, and they were ordered to pay costs.[10] In 2006, the Prosecutor General rejected the authors' application for an appeal on points of law. On 9 June 2006, the authors filed a complaint before the Constitutional Court. On 22 November 2006, the complaint was declared inadmissible on the grounds that it was not filed within the applicable statutory limitations period.

The complaint

3.1 The authors submit that the refusal of the State party to allow them to invoke Law no. 87/1991 concerning restitution of property constitutes a violation of their rights under article 26 of the Covenant, as M.S., who was herself a victim of expropriation during a communist/fascist regime in similar circumstances as the one they had to face, was allowed to invoke the same law. The authors further assert that the courts ordered the restitution of

[2] The authors cite Ordinance no. NC II 823/48 (30 July 1949) of the Trenčín district court.

[3] The authors cite Ordinance No. RIII 630/50 (28 March 1951) of the Bratislava Court of Appeals.

[4] The authors cite the Bratislava Court of Appeals Decision no. 16 Co 53/94 – 51 (14 September 1994).

[5] The authors cite note of the Attorney General of the Slovak Republic No. VI Pz 123/96-57 (26 June 1996).

[6] The authors cite section 1, para. 5 of Law No. 87/1991.

[7] The authors cite note of the Attorney General of the Slovak Republic No. VI Pz 123/96-60 (17 December 1996).

[8] The authors cite Constitutional Court decision No. 281/1996.

[9] The authors cite decision No. 8C 1163/1994 of the Trenčín district court (Okresny sud v Trenčín e) (27 February 2004).

[10] The authors cite decision no. 19 CO 220/05 of the Trenčín Court of Appeals (15 December 2005). The costs were 307,938.50 Sk.

the property to the descendant of individuals who had acquired it through legislation that discriminated against the Jewish people and that one of those individuals had actively participated in the genocide of the Jewish people. The authors maintain that these facts were noted by the Bratislava Court of Appeal. They further argue that international law calls for the restitution of property to rightful owners when the property was acquired by illegitimate means.[11]

3.2 The authors also submit that their right to an effective remedy under article 2, paragraph 3, of the Covenant was violated by the Constitutional Court, which declared their complaint inadmissible because it was filed after the expiration of the two-month statutory limitations period.[12] The authors maintain that they complied with the statutory period, as they were informed of the Prosecutor General's decision not to introduce an appeal on points of law on 12 April 2006, and filed their complaint on 9 June 2006. The authors assert that the Constitutional Court incorrectly held that the statutory period begins to run when the judicial decision on the merits is rendered (as opposed to when the application for an appeal on points of law by the Prosecutor General is rejected).[13] The authors state that in its decision, the Constitutional Court itself noted that the statutory period could begin to run when a public authority renders a communication. The authors maintain that the decision on inadmissibility of the Constitutional Court violated their fundamental rights by penalizing them for applying for the intervention of the Prosecutor General. The authors further assert that the Constitutional Court did not consider that the authors had tried to have the judicial decisions against them annulled by going through the Prosecutor General's Office. They also submit that the principle of legitimate expectations was violated because the State party led them to entertain reasonable expectations by opening proceedings through the Prosecutor General.[14] The authors state that they were unable to appeal to the Constitutional Court before the definitive decision of the Prosecutor General. They claim that the Prosecutor General had appealed to the Supreme Court in 1996 in the same matter. The authors therefore consider that they have exhausted all available domestic remedies.[15]

The State party's observations on the admissibility of the communication

4.1 In its submission of 4 October 2010, the State party requested that the Committee declare the communication inadmissible.

4.2 The State party considers that the authors did not meet the two-month statutory period for filing a complaint before the Constitutional Court, and that they did not exhaust all available domestic remedies. Under section 53(3) of the Act on the Constitutional Court, the statutory period begins to run upon the entry into force of a decision, notification of an injunction, or communication on another intervention. In the case of an injunction or

[11] The authors cite article 24, para. 3 of the Statute of the International Criminal Tribunal for the Former Yugoslavia.

[12] The authors cite Constitutional Court order No. II US 391/06-13 (22 November 2006).

[13] The authors' arguments on the issue of the basis of the decision of the Constitutional Court were made in a supplemental submission dated 24 September 2009.

[14] The authors cite the European Union definition of the principle of legitimate expectations as follows: "The protection of legitimate expectations extends to any individual who is in a situation in which it appears that the conduct of the Community administration has led him to entertain reasonable expectations". See *Jean-Louis Chomel v. Commission of the European Communities*, case T-123/89, summary, para. 2.

[15] The authors also note that their complaint is not currently being examined by another international tribunal or procedure. In 2008, the authors' complaint before the European Court of Human Rights was declared inadmissible due to non-exhaustion of domestic remedies.

another intervention, the statutory period begins to run on the day when the complainant could have learned of that injunction or other intervention. A failure to comply with the statutory period constitutes grounds for dismissal.[16] In this case, the contested proceedings were concluded on 12 January 2006, when the judgments of the Trenčín district court and the regional court became final.[17] The authors' complaint was delivered to the Constitutional Court by fax on 11 June 2006 (the original copy was delivered on 13 June 2006). The State party therefore considers that the complaint was filed after the expiration of the statutory period.

The authors' comments on the State party's submission

5. By submission dated 29 November 2010, the authors maintain that they have exhausted all domestic remedies, renewing the assertions made in their previous submissions. They further argue that their position is supported by the State party's observation that the statutory period in question may begin to run on the date on which the complainants could have learned of "another intervention". The authors assert that in their case, the definitive decision of the Prosecutor General constitutes "another intervention", and that the statutory period therefore began to run on the date on which the authors were notified of that decision, namely 12 April 2006.

The State party's further observations on admissibility and observations on the merits

6.1 On 3 February 2011, the State party submitted further observations on admissibility and merits. With regard to the authors' claim under article 26 of the Covenant, the State party considers that its legal system embodies the human rights standards set forth in the Covenant.[18] It considers that the Trenčín district court rejected the authors' claim for title to the property at issue on the grounds that they did not prove urgent legal interest. The part of the proceedings relating to the restitution of property was terminated due to the withdrawal of the claim. The State party further considers that M.S. acquired the title to the contested property through restitution proceedings before the Trenčín district court.[19] Her ownership of the property was confirmed by previous final court decisions.[20] In the subsequent proceedings on the determination of title to property, the reopening of final restitution proceedings was barred by the impediment of a finally adjudicated matter (the principle of res judicata). The Trenčín regional court upheld the contested judgment in a final decision.[21] On the basis of the above considerations, the General Prosecution Office of the Slovak Republic denied the authors' petition to lodge an appeal on points of law. Although the prosecution authority had previously challenged restitution proceedings in the case of M.S. in 1996 by lodging an appeal on points of law, it could not invoke this authority in favour of the authors in 2006, because the restitution case had been finally adjudicated and because the one-year statute of limitations had expired.[22] Furthermore, it was not possible to

[16] The State party cites section 25 (2) of the Act on the Constitutional Court.

[17] The State party cites a written opinion of deputy presiding judge of the Trenčín district court, Mgr. Frantisek Berec (20 September 2010). The State party also refers to the Trenčín district court judgment in case No. 8 C 1163/94, and the regional court judgment in case No. 19 C 220/05.

[18] The State party cites, inter alia, article 12, para. 5 of the Constitution of the Slovak Republic (guaranteeing freedom and equality in dignity and rights for all).

[19] The State party cites file ref. 8C 1639/93 (concluded in 1995).

[20] The State party cites Supreme Court of the Slovak Republic No. 3Cdo 55/1993 and No. 3Cdo 13/1995 and Bratislava regional court No. 17Co 345/1995.

[21] The State party cites file ref. 19Co 220/05 (15 December 2005).

[22] The State party cites section 243g of the Code of Civil Procedure.

file an appeal on points of law to stay the proceedings, because this was prevented by section 243 of the Code of Civil Procedure.

6.2 With respect to the authors' claim under article 2, paragraph 3 of the Covenant, the State party reiterates the arguments presented in its initial observations, and emphasizes that because complaints filed outside the two-month statutory period are inadmissible under the law, the Constitutional Court was required to reject the authors' complaint.[23] The State party further considers that the time of service of the notice stating that the authors' petition for an appeal on points of law was put aside has no effect on the running of the disputed statutory period. the determinative date is the day on which the contested decision of the regional Court became final. By its nature, the right to file an appeal on points of law is not granted constitutional protection. The jurisprudence of the Constitutional Court establishes that if a complainant cannot personally use a legal remedy, that remedy cannot be deemed to be effective and directly available to the complainant. Therefore, the Prosecutor General's denial of the authors' application for an appeal on points of law did not constitute denial of an "effective legal remedy" to the authors. Conversely, a Constitutional Court complaint challenging violations of human rights and fundamental freedoms is an effective domestic legal remedy that must be exhausted in order to present an admissible complaint before the Committee. Because the authors did not comply with the statutory period for filing a complaint before the Constitutional Court, they did not effectively use this legal remedy.[24]

6.3 The State party also considers that no further legal remedies are available to the authors in this case. Determination of title to property and changes to a cadaster can only be made by a court in judicial proceedings. In this case, the right of ownership of the disputed property was granted in judicial proceedings to M.S. and she used her right to dispose of property by transferring it to a third party.

Further comments by the authors

7.1 On 28 March 2011, the authors submitted further comments on the State party's observations, repeating their argument regarding the disputed statutory period. They further maintain that the Constitutional Court denied them an effective remedy by refusing to consider the merits of their complaint, because the Prosecutor General was obligated to appeal on the points of law, given the racial persecution that led to the acquisition of the disputed property by M.S. The authors assert that the Prosecutor General bears the responsibility of ensuring respect for the law and of appealing on points of law in cases where recognized rights are violated and no other remedies are available. The authors further maintain that the State party has unforeseeably changed its position with respect to the power of the Prosecutor General to appeal on points of law; the authors argue that this change of position has prejudiced them and is indicative of a lack of judicial security.

7.2 With regard to the State party's observation that the Trenčín district court rejected their claim because the authors did not prove "urgent legal interest", the authors maintain that title to the disputed property was erroneously transferred from M.S. to a third party because a court omitted to render a decision on the application by R.W. for provisional

[23] The State party cites section 53, para. 3 of the Act 38/1993 Coll. on the organization of the Constitutional Court of the Slovak Republic; and section 25, para. 2 of the Act on the Constitutional Court.

[24] The State party refers to "the established case law of the European Court of Human Rights" as providing that it is not sufficient to formally use (exhaust) domestic legal remedies; rather, legal remedies must be filed within relevant time limits and in compliance with the requirements of national legislation.

interim measures, in violation of the authors' right to swift proceedings.[25] The authors maintain that because their claim was concrete, real, and material, the court should have considered it on the merits.

7.3 As to the State party's observation that the reopening of the finally concluded restitution proceedings was barred by the principle of res judicata, the authors assert that the State party has in effect conceded that M.S. was erroneously granted title to the property. The authors maintain that only the civil court has the authority to take a position on the issue of res judicata, and never did so in this case. The authors should therefore have been free to resort to the civil court for a decision on their claim to title to the property.

7.4 The authors agree with the State party's observation that the Trenčín regional court and district court proceedings were finally concluded on 12 January 2006, but argue that this only serves to underline the excessive duration of the proceedings (11 years, 4 months and 2 weeks). The authors assert that their right to swift proceedings was clearly violated.

7.5 The authors dispute that they failed to meet the one-year statutory time limitation for requesting the Prosecutor General to appeal on points of law. They consider that the res judicata issue was decided on 12 January 2006 and that they requested the Prosecutor General to appeal in the same year. They further have doubts as to the impartiality of the judge who decided their case before the Trenčín regional court, as he bore the same surname as the attorney who represented M.S., and the Prosecutor General did not exclude the existence of such family relations. The authors also submit that, contrary to the State party's observation, the Prosecutor General was not barred from appealing on points of law, because the district court and the Court of Appeal decided the authors' case on the merits. The authors maintain that the Prosecutor General was obligated to appeal on points of law, because the law does not allow for discretion in this regard when all requisite conditions are met.[26]

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 With regard to the authors' claim that they are entitled to restitution of the disputed property, the Committee recalls that the right to property is not protected by the Covenant,[27] and that it is thus incompetent *ratione materiae* to consider any alleged violations of this right. Accordingly, this claim is inadmissible under article 3 of the Optional Protocol.[28]

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[25] The authors identify R.W. as a successor to the Hermmans.

[26] The authors cite section 243e of the Code of Civil Procedure as stating: "If the Prosecutor General, upon request of one of the parties to the proceeding [...] finds a violation of law, and if the protection of rights and interests enjoyed by individuals [...] requires it, and if there exists no other remedy assuring this protection, the Prosecutor General appeals such a judicial decision on points of law".

[27] See communication No. 724/1996, *Jarmila Mazurkiewiczova on her own behalf and on behalf of her father, Jaroslav Jakes v. Czech Republic*, inadmissibility decision of 26 July 1999, para 6.2 and communication No. 544/1993, *K.J.L. v. Finland*, inadmissibility decision of 3 November 1993.

[28] In light of this conclusion, the Committee does not deem it necessary to further examine the authors' claims that they met the one-year statutory time limitation for requesting the Prosecutor General to file an appeal on points of law, or that the State party violated the principle of legitimate expectations when the Prosecutor General initiated proceedings on their petition but declined to file an appeal on points of law.

8.3 The Committee further recalls that it has repeatedly held that it is not a final instance competent to re-evaluate findings of fact or the application of domestic legislation, unless it can be ascertained that the proceedings before the domestic courts were arbitrary or amounted to a denial of justice.[29] The Committee notes that the authors assert that the State party violated their right to an effective remedy under article 2, paragraph 3 of the Covenant because the Constitutional Court erroneously declared their complaint inadmissible due to untimeliness. because the domestic court proceedings were impermissibly lengthy and because the Prosecutor General declined to file an appeal on points of law in response tc their petition. The Committee further notes the authors' argument that their inability to obtain restitution of the disputed property under Law No. 87/1991 amounted to discrimination, in violation of article 26 of the Covenant. The Committee deplores the discriminatory circumstances surrounding the expropriation of the property. However, the Committee observes that the Covenant cannot be applied retroactively and that the expropriation occurred during the Second World War, prior to the entry into force of the Covenant and of the Optional Protocol.[30] The Committee further considers that the authors' inability to have their case considered by the Constitutional Court and obtain restitution of the disputed property was due to procedural rules that were applicable to all equally. The Committee therefore considers that the authors have failed to substantiate, for purposes of admissibility, that the conduct of the domestic courts amounted to arbitrariness or a denial of justice. Accordingly, these claims are inadmissible under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That the decision be transmitted to the State party and to the authors.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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[29] See communications No. 541/1993, *Errol Simms v. Jamaica*, decision of 3 April 1995, paragraph 6.2; 1138/2002, *Arenz et al. v. Germany*, decision of 24 March 2004, paragraph 8.6; 917/2000, *Arutyunyan v. Uzbekistan*, Views of 29 March 2004, paragraph 5.7; 1528/2006, *Fernández Murcia v. Spain*, decision of 1 April 2008.

[30] Communication No. 1748/2008, *Josef Bergauer et al. v. Czech Republic*, inadmissibility decision of 28 October 2010, para 8.3.